

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-808

August 25, 1999

BELL ATLANTIC-MAINE  
Notice of Merger with GTE Corporation

ORDER ON  
RECONSIDERATION

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

In this Order we have reconsidered our Interim Order of January 8, 1999. We invite Bell Atlantic-Maine (BA-ME) to provide specific information concerning its service provisioning and service quality, including its ordering and repair practices. At this time, we do not decide that BA-ME is exempt from the approval requirement under 35-A M.R.S.A. § 708 for its proposed reorganization that consists of a merger between Bell Atlantic Corporation with GTE Corporation; we also do not approve the proposed merger.

**II. BACKGROUND**

On October 2, 1998, the Bell Atlantic operating utility in Maine, New England Telephone & Telegraph Company (NET) d/b/a Bell Atlantic-Maine (BA-ME), filed a letter with the Commission stating that its parent corporation, Bell Atlantic Corporation, was planning to merge with GTE Corporation. 35-A M.R.S.A. § 708 requires approval by the Public Utilities Commission of any "reorganization" of a public utility. A reorganization of a public utility includes the "merger" (among other organizational changes) of any "affiliated interest," including one that owns 10% or more of the public utility. Bell Atlantic Corporation owns 100% of NET.

In the same letter, BA-ME claimed that it was exempt from the section 708 approval requirement because of an exemption provision contained in the Stipulation approved by the Commission on July 16, 1993 in Docket No. 86-224.<sup>1</sup>

On January 8, 1999, we issued an Interim Order stating that we would not rule on the exemption claim, but would wait until after rulings on the merger by the United States Department of Justice (DOJ) and the Federal Communications Commission (FCC). On January 25, 1999, BA-ME filed a Motion for Reconsideration of the

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<sup>1</sup> *New England Telephone and Telegraph Company, Investigation of Reasonableness of Rates*, Docket No. 86-224, Order Approving Affiliated Interest Stipulation (July 16, 1993). The exemption provision exempts BA-ME from needing approval for *all* reorganizations "except a reorganization resulting in a change of ownership or control of NET . . ." (emphasis added).

January 8<sup>th</sup> Order. In that motion, BA-ME argued that the Commission had initially raised concerns about the effect of the proposed merger on competition and that those concerns were similar to those being considered by the DOJ and FCC. BA-ME requested the Commission to rule that the merger would be approved if the DOJ and FCC approved it. On March 18, 1999, we issued an order reopening the prior order and stating that we would reconsider the Order following a further round of comment. We asked the petitioners to intervene (the Public Advocate and Sprint) to provide us with specific information that would indicate that the merger would have an impact on competition *in Maine*.

### III. DISCUSSION AND DECISION

Neither the Public Advocate nor Sprint presented convincing information that the proposed merger would have a negative impact on competition in Maine. We doubt there would be any such impact primarily because GTE has virtually no presence in Maine. It provides service to a limited number of customers as an interexchange reseller. We have granted authority to provide such service to more than 270 interexchange carriers, many of which are facilities-based. Indeed, if the effect on competition were our only concern, we would have little difficulty approving the merger, although, as discussed below, we believe that Bell Atlantic should be subject in Maine to any merger conditions that may be imposed by the DOJ and FCC.

Nevertheless, we are unwilling to conclude that the stipulation in Docket No. 86-224 exempts Bell Atlantic from the approval requirement of section 708 or, in the alternative, to grant automatic approval of the merger upon DOJ and FCC approval. In either event, an important merger that has the potential to affect the operating utility's operations would occur without review by this Commission.

We are uncomfortable with the alternatives stated above for two reasons. First, if the exemption were found to apply, it would exempt major changes in the ownership of a public utility from the section 708 approval requirement. Moreover, under the 86-224 Stipulation, whether a particular reorganization were exempt might well depend on the form of the reorganization rather than on its ultimate substantive effect. In this case, it can be argued that BA-ME's claim of exemption is supported by the language of the Stipulation because the reorganization consists of a merger between its parent corporation (Bell Atlantic Corporation) and GTE Corporation and the surviving corporation would be BA-ME's existing parent, i.e., Bell Atlantic Corporation. On the other hand, if GTE (rather than Bell Atlantic) were the surviving corporation of a parent-level merger, or if the operating utility itself merged with another large corporation, the reorganization clearly would not be exempt.

Second, during the past year we have become aware of numerous complaints about Bell Atlantic's service provisioning and service quality. We are aware of problems or alleged problems in retail and wholesale service installations, in network congestion, and in the response time and efficacy of repair services. While we have no way of knowing whether these difficulties are attributable to the change in ownership or

management that occurred as a result of the NYNEX-Bell Atlantic merger in 1997, we also cannot conclude, absent some further showing by Bell Atlantic, that another merger, resulting in an approximate doubling of the size of the existing parent corporation, would not result in further deterioration in service quality. To the extent that BA-ME's small size already makes it difficult for BA-ME to "get the attention" of the Bell Atlantic managers responsible for ensuring service quality, a merger with GTE could in theory exacerbate the problem, because the relative size of BA-ME would diminish in the much larger corporate organization consisting of the merged Bell Atlantic and GTE.

We therefore are unwilling at this time to issue a ruling that the proposed Bell Atlantic-GTE merger is exempt from the approval requirement of section 708 or, as BA-ME has suggested, simply approve the merger. If it proves necessary to address Bell Atlantic's legal claim that the proposed merger is exempt from approval, and if we conclude that we are inclined to agree with that position, we would consider using the provisions of 35-A M.R.S.A. § 1321 to reopen the Stipulation in Docket No. 86-224 and determine whether to modify or terminate the exemption.<sup>2</sup>

As an alternative to addressing the merits of Bell Atlantic's exemption claim, we suggest that Bell Atlantic should agree that the Commission should consider approval of the merger upon conditions related to service, reliability, quality, and provisioning. If Bell Atlantic agrees, it should file a detailed plan for addressing the problems its Maine customers have experienced. The plan should include detailed provisions for ensuring that:

- Service installation and repair appointments will be scheduled without undue delay and that such appointments will be met,
- When scheduled appointments cannot be met, customers will be notified in advance,
- Installations will not be scheduled by customer service personnel unless they know that sufficient facilities exist in the customers' locations,
- The Company has the capability to quickly diagnose and repair calling anomalies (such as those that have occurred in Houlton and Carthage),
- Customers will not experience incorrect services, installations or repairs because of errors introduced by one or more of the Company's automated service order processing systems,

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<sup>2</sup> Independently from the present proposed merger, we may find it advisable to reopen the 86-224 Order Approving Affiliated Interests Stipulation in any event because of our concern that major changes in the ownership of a public utility should be subject to review.

- When a serious service problem occurs, the Company will make available to the Commission, on short notice, the Company personnel best qualified to explain the reason(s) for the problem and how it will be corrected, and
- Switches, line units, switch module links, umbilicals, and trunks will not become overloaded.<sup>3</sup>

Given our concern that Maine may receive less attention from a substantially larger Bell Atlantic, because the State will provide a smaller percentage of the Company's revenues and perhaps also because the Company may face less competition here than in other states it serves, the plan should include one additional element. Specifically, it should establish generally applicable procedures under which the Commission, when confronted with future service quality problems, will be able to secure prompt action from the Company officials empowered to authorize the measures needed to remedy the problem. In short, the plan should set forth clear lines of accountability and specific protocols to ensure that service quality problems will be addressed quickly and competently. The plan should leave no doubt in the minds of Bell Atlantic's Maine ratepayers that the merger will in no way jeopardize their right to an acceptable level of telephone service.

We also suggest that Bell Atlantic agree that any conditions any that the DOJ and FCC may impose should also apply in Maine, so that this Commission will have independent enforcement authority.

If Bell Atlantic presents a reasonable approach to addressing the service-related concerns, and commits as a condition of our merger approval to meet these conditions, we expect that the merger could be approved promptly.<sup>4</sup>

Bell Atlantic should file its plan to address these concerns no later than September 30, 1999.<sup>5</sup>

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<sup>3</sup> For its response to the network congestion problems listed in this last item, and related manifestations such as no dial tone, delayed dial tone, blocked calls and fast busy signals, the Company may file the report that it must file in response to Section X of the July 21, 1999 Order in Docket No. 99-132.

<sup>4</sup> As indicated above, no party has raised sufficient Maine-specific objections to warrant a finding that the merger should be rejected. We are, therefore, satisfied that except for the possible impact on service quality, the merger meets the public interest test in section 708.

<sup>5</sup> If Bell Atlantic determines that it prefers instead to rely entirely upon the Stipulation, or proceed in any way other than what we have proposed here, it should notify the Commission no later than August 31, 1999.

Dated at Augusta, Maine, this 25<sup>th</sup> day of August, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.